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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SALVADORE GARCIA,

Petitioner,

v.

BRIAN WILLIAMS, SR., et al.,

Respondents.

Case No. 2:18-cv-00589-JCM-VCF

ORDER

Petitioner Salvadore Garcia submitted a *pro se* petition for writ of habeas corpus, pursuant to 28 U.S.C. § 2254 (ECF No. 1-1). He submitted an application to proceed *in forma pauperis*; however, he has not included a completed financial certificate signed by an authorized officer or the inmate account statements (see ECF No. 1). Accordingly, this matter has not been properly commenced. 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2.

Thus, the present action will be dismissed without prejudice to the filing of a new petition in a new action on this court's form with either the \$5.00 filing fee or a completed application to proceed *in forma pauperis* on the proper form with both an inmate account statement for the past six months and a properly executed financial certificate.

It does not appear from the papers presented that a dismissal without prejudice will materially affect a later analysis of any timeliness issue with regard to a new action

1 filed in a timely manner.¹ Petitioner at all times remains responsible for properly
2 exhausting his claims, for calculating the running of the federal limitation period as
3 applied to his case, and for properly commencing a timely-filed federal habeas action.

4 **IT IS THEREFORE ORDERED** that petitioner's incomplete application to
5 proceed *in forma pauperis* (ECF No. 1) is **DENIED**.

6 **IT IS FURTHER ORDERED** that the Clerk shall detach and file the petition (ECF
7 No. 1-1).

8 **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice to
9 the filing of a new petition on the court's form in a new action with a properly completed
10 application form to proceed *in forma pauperis* or the \$5.00 filing fee.

11 **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**, as
12 jurists of reason would not find the court's dismissal of this improperly commenced
13 action without prejudice to be debatable or incorrect.

14 **IT IS FURTHER ORDERED** that the Clerk shall **ENTER JUDGMENT** accordingly
15 and close this case.

16 DATED: 17 April 2018.

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18 JAMES C. MAHAN
19 UNITED STATES DISTRICT JUDGE
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27 ¹ This court takes judicial notice of the dockets of the Nevada Supreme Court and the Nevada Court of
28 Appeals. On October 11, 2007, the Nevada Supreme Court affirmed Garcia's convictions, and remittitur
issued on November 6, 2007. Nevada Supreme Court Case No. 71339. On August 16, 2017, the Nevada
Court of Appeals affirmed the denial of Garcia's state postconviction petition as untimely and procedurally
barred, and remittitur issued on September 12, 2017. Nevada Court of Appeals Case No. 71339.